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3. MECHANIC'S LIEN—*Uncompleted work—set-offs—penalty or forfeiture.* In a suit in equity to enforce a mechanic's lien, where the contractor has not completed his work, the owner is entitled to set-off against the contractor's claim the sum which it would take to complete the contract and any damages sustained by the owner by reason of the delay in the completion of the contract, and these *damages* will not be confined to a panalty or forfeiture stipulated for in the contract.

4. ARBITRATION—*Withdrawal from submission—damages.* Either party may withdraw from an agreement to arbitrate an existing cause of action at any time before the award is made. The only remedy for the party aggrieved is a suit for damages for breach of the submission. The agreement to submit is no bar to a suit at law or in equity, and no foundation for a suit for specific performance.

NORFOLK & WESTERN RAILROAD COMPANY v. BROWN.—Decided at Wytheville, July 11, 1895.—*Buchanan*, J:

1. MASTER AND SERVANT—*Safe machinery—mismatched couplings not negligence per se.* A master is bound to observe all the care which the exigencies of the situation reasonably require in furnishing machinery adequately safe to be used by the servant. But the use of cars of unequal heights and mismatched couplings in the same train is not negligence *per se* in furnishing safe machinery.

2. NEGLIGENCE—*Proximate cause—fellow-servant.* The proximate cause of the injury in this case was the negligent driving back of the train a second time by the engineer or fireman of the train, who were the fellow-servants of the brakeman injured, and hence the company is not liable.

3. NEGLIGENCE—*How proved—burden of proof.* Negligence may be proved by circumstantial evidence as well as by direct testimony, but the burden of proof is on the party alleging the negligence. The evidence in this case, considered as on a demurrer to the evidence, fails to establish the negligence of the defendant.

NORFOLK & WESTERN RAILROAD CO. v. HARMAN & CROCKETT.—Decided at Wytheville, July 11, 1895.—*Riely*, J:

1. COMMON CARRIER—*Shipping facilities—negligence.* When a railroad company holds itself out as a common carrier of live stock, the law imposes upon it the duty to provide suitable and safe facilities, such as yards or pens, both at the place of shipment and the place of destination, for receiving and discharging the live stock offered to it for shipment over its road. If it permits salt water to be in such pen accessible to lambs offered for shipment, it is guilty of negligence and liable for the loss occasioned thereby.

2. COMMON CARRIER—*Shipping facilities—contract against negligence.* Although the printed contract of shipment stipulates that the carrier of stock shall not be liable for any injury to the stock until they are loaded into the car, and the car-door fastened or secured by the conductor, and shall only be liable for the safe carriage and delivery of the stock to its connecting lines, yet if the injury which occasioned the loss was inflicted at the shipping point before loading, through the failure of the carrier to provide safe and suitable shipping facilities, such failure